# Terms and Definitions

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The terms and definitions in this booklet have been written in plain language. In some cases, a definition of a word or phrase is worded differently from the definition contained in a statute to make it easier to understand.

Reading these terms and definitions will not replace getting legal advice from a lawyer.

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# A

## Access

Access refers to the right of a parent who does not live with her or his children to visit or spend time with them. Access is described in the court order or **separation agreement.** Different types of access include reasonable access, specified access, and supervised access.

***Reasonable Access:*** Allows the **non-custodial**/non-residential parent to visit with the children at times arranged with the **custodial**/residential parent. The times must be reasonable and appropriate for the situations. Reasonable access gives parents the flexibility to make their own arrangements.

***Specified Access:*** Sets out certain times for the **non-custodial**/non-residential parent to be able to spend time with his or her children.

***Supervised Access:*** Says that the **non-custodial**/non-residential parent may spend time with the children only with another adult present. Supervised access is generally ordered in situations where the court believes this is necessary for the welfare or **best interests** of the children.

## Adjournment

A delay or postponement of a court hearing or trial.

## Affidavit

A written statement of facts that is **sworn** under oath as being the truth. A **party** or **witness** may file an affidavit as a way of giving **evidence** to the court.

## Age of Majority

The age of majority is 19 years in Nova Scotia.

## Alternative Dispute Resolution

Alternative dispute resolution (or ADR) refers to ways to settle disputes or differences without a court **trial**.

## Answer

The formal response to a **Petition for Divorce** which states the **respondent's** position. An answer must be filed with the court and served upon the **petitioner** within a set number of days after **service** of the Petition for Divorce.

## Appeal

A review by a higher court of a decision made by a lower court. There must be legal grounds or reasons to appeal, such as that the lower court has made an error. You can't appeal just because you disagree with or do not like the judge's decision.

## Applicant

A person who starts an application in court.

## Application

Filing an application is a way of asking the court to make an order. An application states what type of order the person is seeking.

# B

## Best Interests

The test that the court uses to make decisions about **custody** and **access**. The children's needs and well-being are always the most important factors. The judge must decide what is best for the children, not what is best for either of the parents.

# C

## Certificate of Divorce

A Certificate of Divorce is the final document issued by the court at the end of a divorce proceeding. The court sends the **parties** a Certificate of Divorce 31 days after the **Divorce Judgment** has been issued, if the Divorce Judgment has not been appealed. A Certificate of Divorce says that the divorce is final; it means that the parties are free to remarry.

## Chambers

A process for a judge to hear **applications** for some court orders. Chambers is always held in a courtroom, and several applications may be held in any session.

## Child Support

Money paid by one parent to the other parent to contribute to the children's living expenses. The amount is based on the **non-custodial**/non-residential parent's gross annual income and is usually paid every month. (See also **Child Support Guidelines.**)

## Child Support Guidelines

The Child Support Guidelines are rules for calculating how much **child support** the **non-custodial parent** will have to pay. The guidelines include support tables for each province and territory. There are also rules for calculating special or extraordinary expenses, claims of undue hardship, and child support amounts in cases of **split** or **shared** custody. The federal Child Support Guidelines are used when parents are divorcing or already divorced. The provincial Child Maintenance Guidelines are used in all other situations such as when parents were not married to each other, lived together in a common-law relationship, or are married and separated, but not divorcing.

## Conciliator

A court officer who is responsible for managing each case and will meet with the **parties**, either separately or together, to help them with the court process. Conciliators make sure that each party provides all the necessary documents and other information to the court. Conciliators also help to identify the legal issues and help the **parties** reach agreements if possible and appropriate.

## Corollary Relief Judgment

A corollary relief judgment is a court order that is issued as part of a divorce proceeding. A corollary relief judgment usually addresses issues such as **custody, access, child support, spousal support,** and the division of **matrimonial assets.**

## Costs

A judge may choose to order costs at the end of a trial. "Costs" refers to money to be paid by one side if there is a contested hearing or **trial** between the parties. Costs are intended to help compensate the successful party for his/her legal expenses as a result of being in court. Costs may also be ordered against a person who fails to follow the court's directions or instructions before or during a trial.

## Custodial Parent

The parent with whom the children live is known as the "custodial" or the "residential" parent. The other parent is the "**non-custodial**" or "non-residential" parent.

## Custody

The term "custody" includes where the children live and the person who is responsible for making the decisions involving the children. Different types of custody are sole custody, joint custody, shared custody, and split custody.

***Sole Custody:*** The children live with one parent and the other parent may have the right to visit with the children. The **custodial** or residential parent is responsible for making decisions about the children but the **non-custodial** or non-residential parent may be allowed to have some input.

***Joint Custody:*** The children live with one parent and the other parent has the right to visit with the children. However, the parents make major decisions about the children together.

***Shared Custody:*** Shared custody is defined by the **Child Support Guidelines** as being when either parent exercises the right of **access** to or has physical custody of a child for not less than 40 per cent of the time over the course of a year.

***Split Custody:*** When the parents have more than one child together and each parent has custody of one or more of those children.

# D

## Default

The failure to do something. Examples are not obeying the terms of a court order or not filing documents the court needs.

## Divorce Judgment

An order from the court that says that two people are divorced. Unless the husband or wife appeals, the divorce judgment becomes effective on the 31st day after the date of the judgment (see also **Certificate of Divorce**).

# E

## Evidence

Information given by **parties** or **witnesses**, either orally or in writing (in an **affidavit**), which the judge uses to make a decision.

## Exclusive Possession

The right of one party to be the only one to use a residence or other asset, usually a matrimonial home (the family home) or its contents. The court may award exclusive possession when one of the parties applies for it or may include it as a term in a **separation agreement**.

## Exhibit

A paper, document, or piece of physical **evidence** provided to the court at a **trial** or hearing or as part of an **affidavit**.

# F

## Fees

To file certain legal documents, a person must pay a fee. For example, a person must pay a fee to the court to file a **Petition for Divorce.** Fees may also be charged for certain services provided by the court.

# H

## Home Study Assessment

An assessment conducted by a person who has the professional skill to investigate, assess, and report to the court on the needs of the children and the ability of the **parties** to meet those needs. A judge can order an assessment in cases involving **custody** or **access**.

# I

## Information

A sworn statement (see **swear/affirm**) by a person or the police requesting a peace bond or alleging that an accused committed an offence. An information gives the time and place of an incident and the law that may have been broken.

## Interim Order

A temporary order dealing with some matters until the final decision of the court.

# L

## Leave of the Court

The court's permission to proceed with certain types of **applications**.

## Litigation Guardian

A litigation guardian, or guardian *ad litem*, is an adult who appears in court to start or defend a legal proceeding on behalf of a person who is mentally incompetent or who is under the **age of majority**. Certain requirements must be met before a person can act as a litigation guardian.

## Lying-in Expenses

Money the court orders a party to pay towards the expenses of a single woman during her pregnancy and the birth of her child.

# M

## Maintenance

Money paid by a person toward the living expenses of a spouse, child, or dependent parent. (See also **child support** and **spousal support**).

## Maintenance Enforcement Program (MEP)

All court orders for **maintenance** or **support** must be filed through this provincial government program. The **payor** makes **maintenance** payments through the program. If the **payor** fails to make the payments required by the court order, the MEP may take action to enforce the order.

## Matrimonial Assets

Property acquired by either or both spouses before or during their marriage. Generally, the following are not matrimonial assets:

- gifts, inheritances, or trusts
- awards for settlement of damages
- insurance proceeds
- reasonable personal effects
- business assets
- property exempted under a marriage contract or **separation agreement**
- property acquired after **separation**.

## Matrimonial Home

Where the family lived before separation.

## Mediation

Mediation is a type of **alternative dispute resolution** in which a trained, impartial mediator helps the **parties** reach agreements about issues such as **custody** and **access** and sometimes also **child support, spousal support,** and the division of marriage assets.

# N

## Non-custodial Parent

The parent who does not live with or have custody of the children.

# P

## Parties

The person or people on one side of a dispute or an agreement. Parties are the people who have the right to appear in court and to seek an order from the court. (See also **petitioner, applicant, respondent**).

## Payor

The person who pays child or spousal **maintenance** or **support**.

## Peace Bond

A formal signed promise to the court not to contact a person or go to a place. If a peace bond is broken, the person who signed it may have to pay a fine or be jailed.

## Petition for Divorce

A petition is an **application** to start a divorce. Either spouse may file a petition for divorce with the court, or both spouses may file a joint petition.

## Petitioner

A person who starts a divorce proceeding.

## Possible Father

This word is sometimes used in applications under the *Family Maintenance Act*. A possible father is one or more people who could be the father of a child born to a single woman. All possible fathers can be ordered to pay **maintenance** for the child until the court decides who is not a possible father.

## Pre-trial Organizational Conference

A meeting with the judge who will be hearing the trial before the trial. At this meeting, there will be discussions about the number of **witnesses** each side is going to be calling, how long the trial will take, whether all the necessary information has been filed, and whether the trial is ready to proceed.

## Pre-trial Settlement Conference

A short meeting with a judge who is not going to be hearing the trial. At this meeting, the **parties** briefly explain to the judge their own positions on each issue. The judge then gives a brief opinion based on how he or she thinks the case could be resolved. This meeting is used to help settle cases.

# R

## Recipient

The person who receives child or spousal **maintenance** or **support**.

## Recognizance

An agreement made with the court that includes the following promises:

- to return to court on a certain date
- to stop specific behaviour
- not to have contact with certain people or places.

## Respondent

A person against whom an **application** or a **Petition for Divorce** has been started.

## Rules of Court

Procedures which must be followed and forms to be used when seeking an order from the court.

# S

## Separation

Two people who are married to each other but who are living separate and apart are considered to be officially separated in the eyes of the law. You do not need an official document in order to be "legally" separated.

## Separation Agreement/Minutes of Settlement

A contract between two spouses to live apart on certain terms and conditions, which usually includes **custody** and **access, support,** and the division of **matrimonial assets** and debts.

## Service

The delivery of court documents to the required person, usually to give him or her notice of a legal proceeding. Some documents may be served by mail or left with a designated person on behalf of the named person. In some situations, documents must be personally served by placing the documents directly into the hands of the named person.

### Spousal Support

Money paid by one spouse to another to contribute to the other's living expenses. The support can be paid either by a set amount every month or one lump sum.

### Standing

A person who has standing has the right to be a **party** in a court proceeding and the right to have their case heard and decided. People who do not automatically have standing can apply to the court to get standing.

### Statement of Financial Information

A document that sets out all sources of gross income and sometimes includes estimates of monthly expenses. If **child support** is being addressed, the statement of financial information must also include the information required by the **Child Support Guidelines**.

### Statement of Property

Anyone asking the court to decide a question dealing with property must file a statement of property. A statement of property sets out what assets a person owns and the debts they owe.

### Subpoena

A document that requires a person to give **evidence** at a court proceeding.

### Support

See **child support** or **spousal support.**

### Swear/Affirm

When any **party** or any **witness** swears on a holy book, such as the Bible, to tell the truth, or makes a solemn affirmation (a promise) during a trial that they will tell the court the truth. The process of swearing to tell the truth or taking a solemn affirmation is often referred to as "being sworn."

## V

### Variation

A variation is an **application** to change an existing court order.

## W

### Warrant

A court document that orders the police or other peace officers to arrest someone. The court can issue a warrant if someone fails to appear in court or does not obey a court order.

### Witnesses

The people who give information and **evidence** to the court so that the judge can make a decision.

# Questions and Answers

## *The Court Process*

***1. What should I do after an application has been made?***

You and the other person may be able to work out an agreement before going to court. You can try to do this on your own, or with the help of lawyers, or with the help of someone available through the court, such as a conciliator or mediator.

Also, you should know that if you and the other person already have a court order, and one of you wants to vary or change it, you must apply to have the court change it and you must follow the existing order until it is changed.

***2. What do I do if my situation is an emergency?***

If you believe that you need a court decision immediately, you may wish to speak to a lawyer or a court staff member to see if you qualify for an emergency court hearing.

***3. What if one side does not show up for a conciliation meeting?***

Conciliation is a part of the court process and each person must attend. The conciliator may order that you go to conciliation on certain days or times. The conciliator can also order one of the people involved in the case to give certain information. If someone does not attend conciliation or does not give the needed information, the conciliator can get it from other people and make an order for child support. For more information, see the information sheet titled: "Conciliation: A First Step."

***4. What if I don't like the decision of the conciliator? What can I do?***

A judge can change the decision of a conciliator. You should speak to your lawyer or a court officer about how you start this process. Sometimes, the conciliator may change his or her own decision if new information is given.

***5. What if one of the parties refuses to attend Parent Education or Separation Education?***

All parties must take part in these programs. Sometimes a party can be excused. If you do not take part, the court will note it in your file. The judge will know whether you attended an education program.

***6. Should I have a lawyer?***

Although you can go to court without a lawyer, everyone should have their own lawyer or, at least get legal advice.

Without a lawyer, it will be hard to present your case to the judge in the best possible way. Most people are not aware of the law or of how to argue the legal merits of their case. There are also many rules to follow in the courtroom. Without a lawyer, you will be at a disadvantage.

***7. Who will be in the courtroom when my case is heard?***

Most matters heard in the Family Division are open to the public. You can ask a court staff member if this is the case in your situation.

There will usually be:

- the judge who will hear your case
- the court reporter, who records everything said in the courtroom
- the people involved in your case, that is, you and the other side
- the lawyers representing each side
- a sheriff who makes sure the court is orderly.

The court may hear several cases at the same time, so other people may also be waiting in the courtroom while you are there.

### 8. *Can I bring a friend to court with me?*

You can bring someone to court with you for support as long as he or she does not disrupt the proceedings in any way. People who come to watch usually sit in the back of the courtroom.

### 9. *What if one of the parties does not show up for a hearing or trial?*

In that case, the judge may grant an interim order or a final order or may issue a warrant for the person, or order that he or she pay court costs. In some cases, the court date may be adjourned, depending on the reason the person is absent.

### 10. *What do I call the judge?*

Call a male judge "My Lord" and a female judge "My Lady". When you are speaking to the judge, you should stand.

### 11. *What etiquette should I follow in the courtroom?*

You should dress in a neat and tidy manner to show respect for the court. There must be no hats, no perfume or other scented products, no gum/food/beverages, no smoking, no vulgar language, and no cellular phones or beepers in the courtroom.

### 12. *Can I bring my children to court with me?*

You should have someone look after your children when you go to court. Going to court is a serious matter and children may interrupt the proceedings.

### 13. *Can children testify?*

Children should not be brought into the conflict between their parents, as this can result in the children being forced to take sides. Children are rarely called to be witnesses in court proceedings. As well, judges rarely agree to speak to children in their offices. The judge will look at each case separately.

### 14. *How will the judge know what my child thinks?*

When it is important to understand a child's thoughts in a case, or to get some information from a child directly, the judge may order an assessment. If he or she does, a professional assessor will speak to your child and look into the background of the situation. The assessor prepares a report that tells the court your child's point of view. For more information, see the information sheet titled "Assessments."

### 15. *What happens at the end of the court hearing or trial?*

Once the judge has heard all the evidence, he or she may give the decision in court or the decision may be reserved. This means that the judge will review the evidence presented during the hearing and make his or her decision known at a later date, either in court or in writing.

### 16. *Will I get a copy of the judge's order?*

Once a decision has been made, a court order that states the judge's decision will be prepared. The court will mail a certified copy of the order to you or your lawyer and one to the other party.

### 17. *Do I have to send a copy of the order to the Maintenance Enforcement Program?*

No. If your court order includes child or spousal support, it will automatically be sent to the Maintenance Enforcement Program. You will receive a registration package in the mail.

### 18. *What if I don't like the decision of the judge? What can I do?*

The Court of Appeal has the power to change the decision of the judge, based on legal reasons. There are several procedural steps which must be followed and documents that have to be filed within a short time in order to meet the requirements of an appeal. If you are unhappy with the order made by the judge, it is very important to get

legal advice right away about whether you have sufficient legal grounds for an appeal.

### *19. What happens if the other person does not follow the order?*

If a custody or access order is not being followed, then you can make an application for default. You must show that the other person has not followed the order. If you are registered with the Maintenance Enforcement Program, then the Director of Maintenance Enforcement can take action to make the payor pay support without you going back to court.

### *20. What if I want to change my court order?*

If your order is not working or your circumstances have changed, you may be able to make an application to vary the order. After making such an application, the situation may be resolved through conciliation or mediation, without the need for a hearing before a judge.

### *21. When can I change my name?*

A person may apply to the court for a legal change of name at any time. However, these requests are commonly made as part of a divorce proceeding. Divorcing spouses may legally change their name without the consent of the other spouse. However, in most circumstances, the consent of both parents is required to legally change the name of a child.

# A Checklist to help you prepare for court:

- ❑ **Consider meeting with a lawyer to get some legal advice:**
  Remember that you can meet with a lawyer for a short time to discuss your case
  - ○ Contact Lawyer Referral 455-3135 or 1-800-665-9779 for names of lawyers
  - ○ Lawyers are listed in the Yellow Pages of the phone directory

- ❑ **Learn about the law that applies to your situation:**
  - ○ Refer to Legal Information Society of Nova Scotia publications
  - ○ Refer to pamphlets at the court
  - ○ Call Dial-A-Law 420-1888 for free, recorded information
  - ○ For Child Support Guidelines information, call the Legal Information Society of Nova Scotia at 455-3135 or 1-800-665-9779 or the Federal Department of Justice at 1-888-373-2222

- ❑ **Organize and write down your thoughts**:
  - ○ Why you are going to court?
  - ○ What are the issues?
  - ○ What is your position on each issue?
  - ○ What do you want the judge to order?

- ❑ **Prepare a detailed outline of what you think the judge needs to know to make a decision.**
  This is for your own use. You will not be able to give your notes to the judge. You will not be able to simply read a statement to the judge. If you forget what you want to say, you may ask the judge if you can refer to your notes that you have prepared to help your memory. Remember that you will have to give all of your evidence while under oath, so that the other side can ask you questions.

❑ **For each fact that you want to the judge to know, think about how to get your information to the judge:**

- O you can give evidence,
- O a witness can give evidence or
- O bring documents or other important evidence to court to show the judge.

Example:
You want the judge to know that you attended a parenting course. You could:

1) tell the judge yourself,
2) ask your instructor to come and tell the judge or
3) bring a copy of the certificate that says that you attended.

❑ **Do you have everything you need to support your position?**

Keep in mind that you have to show evidence to support your case. For example, if you are telling the judge that you are going to be laid off in two weeks, have a letter from your employer to support that or have your employer come to court. The judge will not telephone anyone. If you want the evidence to be considered by the judge, you have to bring it that day.

- O Gather all other documents that you want the judge to see. Some examples are:
  - ✓ pay stubs
  - ✓ income tax returns for the past three years
  - ✓ letters from employer
  - ✓ letter from child's school, doctor, etc.
  - ✓ certificates from parenting courses
- O Make three copies of all documents you want the judge to see. (One for you, one for the other side, one for the judge)

❑ **Decide if you should have witnesses.**

Only bring those who can give relevant evidence that they know first hand. If you are bringing a letter from someone, you may be required to bring that person to court.

- O Prepare questions to ask your witnesses when in court
- O When preparing your questions, refer to your outline to make sure you have covered all the information you want each witness to tell the judge

❑ **Arrange to subpoena witnesses.**
Those who will not willingly come can be "subpoenaed" and made to come. Keep in mind that this should be arranged well in advance. (For a definition of subpoena, refer to the Court Assistance Handout "Common Legal Terms and Definitions") If you are going to use subpoenas you will need to:

- O Talk to a court staff person about getting subpoenas
- O Arrange for subpoenas if necessary
- O Arrange to have the subpoenas "served" on each witness
- O Prepare an Affidavit of Service for those you subpoenaed

❑ **Think about what you expect the other side will say:**

- O Prepare questions to ask the other side and their witnesses
- O Think about your responses to things the other side is going to say

❑ **Start to prepare your closing statement before you go to court**
A closing statement does not give evidence, or tell the Judge anything new. Instead, it highlights and summarizes your case.

- O Summarize your important evidence and how it supports your position

❑ **Gather all the Court documents to bring with you.**
These include:

- ✓ Parenting Statement
- ✓ Financial Statement
- ✓ Statement of Property
- ✓ Affidavits
- ✓ Anything you have filed with the Court or the other side has filed with the Court.
- O Organize your documents so that you know where to put your hands on them when in court.

❑ **If your personal safety is a concern during the time you are in court, contact court staff in advance.**

- ❑ **If possible, observe a trial so that you know what to expect.**
  Remember that in the Family Division most trials are open to the public.

- ❑ **Bring paper and a pen.**
  Be prepared to make notes about what the other side says, jot down questions as they occur to you, make notes to add to your closing statement, and write down the judge's decision, if given that day. Throughout the hearing, review your outline to confirm that everything you want the judge to know has come out.

While this checklist can help you prepare for court, it does not replace legal advice. We recommend that you get legal advice.